

UNITED STATES DISTRICT COURT
for the
Western District of Washington

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Jan 11, 2021	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY	DEPUTY

In the Matter of the Search of:
Brandon Allen Nemec

Case No. MJ21-5005

APPLICATION FOR A SEARCH WARRANT FOR BLOOD SAMPLE

I, Ernest M. Brunzelle, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that a sample of blood consisting of one of more tubes or vials should be taken from the following person:

Brandon Allen Nemec

located in the Western District of Washington and that this blood sample is evidence of the following crime or crimes.

- ☒ Driving While Under the Influence in violation of RCW 46.61.502, 18 U.S.C. § 13, and 36 C.F.R § 4.23 or 38 C.F.R. § 1.218
- ☐ Physical Control of a Vehicle While Under the Influence of Alcohol or Drugs in violation of RCW 46.61.504, 18 U.S.C. § 13, and 36 C.F.R § 4.23 or 38 C.F.R. § 1.218
- ☐ Driver under Twenty-One Consuming Alcohol or Marijuana in violation of RCW 46.61.503 and 18 U.S.C. § 13
- ☐ Vehicular Homicide in violation of RCW 46.61.520 and 18 U.S.C. § 13
- ☐ Vehicular Assault in violation of RCW 46.61.524 and 18 U.S.C. § 13
- ☐ _____

This application is based on the facts set forth in the attached affidavit which is incorporated herein as if fully set forth.

Pursuant to Fed. R. Crim. P. 4.1 & 41(d)(3), this warrant is presented:

- ☒ By reliable electronic means. ☐ Telephonically (and recorded).


Applicant's Signature

Ernest M. Brunzelle, Police Officer, JBLM Police

The above-named agent provided a sworn statement attesting to the truth of the foregoing affidavit by telephone on this 10 day of January, 2021.


THE HON. Michelle L. Peterson
UNITED STATES MAGISTRATE JUDGE

1 STATE OF WASHINGTON)
 2) ss
 3 COUNTY OF PIERCE)
 4

5 AFFIDAVIT OF ERNEST M. BRUNZELLE

6 I, Ernest M. Brunzelle, a Police Officer with Joint Base Lewis McChord Police
 7 Department, Joint Base Lewis McChord, Washington, having been duly sworn, state as
 8 follows:

9 AFFIANT BACKGROUND

10 1. I have served as a law enforcement officer for the past 8 years. My training
 11 and experience relevant to the investigation discussed below includes the following:

- 12 ☒ Basic Training at the Federal Law Enforcement Training Center
 13 ☐ Basic Law Enforcement Academy at the Washington Criminal
 14 Justice Training Commission
 15 ☒ Standardized Field Sobriety Testing
 16 ☐ Advised Roadside Impaired Driving Enforcement Training

17 2. The information presented in this affidavit is:

- 18 ☐ Based on my personal observations and interviews that I have
 19 conducted.
 20 ☒ Based on the personal observations and interviews conducted by
 21 Military Police Specialist Derreck M. Fleming who has 2 years of
 22 experience as a Military Police Officer and Department of the Army
 23 Civilian Police Sergeant Tyreise A. Dean who are Police Officers
 24 with the Joint Base Lewis McChord Police Department. I have
 25 learned that Military Police Specialist Derreck M. Fleming has
 26 received training at the United States Army Military Police School
 27 and Sergeant Tyreise A. Dean has received the following relevant
 28 training and has over 15 years of experience as a law enforcement
 officer, and is currently certified in Standardized Field Sobriety Test
 to National Highway Traffic Safety Administration standards,
 certified in Advanced Roadside Driving Enforcement, and
 Washington Advanced Collision Investigations.

INTRODUCTION AND PURPOSE OF THE AFFIDAVIT

3. The purpose of this affidavit is to seek a search warrant to authorize me or other law enforcement officers to direct a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in Chapter 18.88A of the Revised Code of Washington (RCW), a physician assistant as defined in chapter 18.71A of the RCW, a first responder as defined in chapter 18.73 of the RCW, an emergency medical technician as defined in chapter 18.73 of the RCW, a health care assistant as defined in chapter 18.135 of the RCW, or any technician trained in withdrawing blood to extract a blood sample consisting of one or more tubes or vials from Brandon Allen Nemec (hereafter "the Subject"). This warrant is requested for the purpose of gathering evidence of the following crime(s):

- ☒ Driving While Under the Influence in violation of RCW 46.61.502, 18 U.S.C. § 13, and 36 C.F.R § 4.23 or 38 C.F.R. § 1.218
- ☐ Physical Control of a Vehicle While Under the Influence of Alcohol or Drugs in violation of RCW 46.61.504, 18 U.S.C. § 13, and 36 C.F.R § 4.23 or 38 C.F.R. § 1.218
- ☐ Driver under Twenty-One Consuming Alcohol or Marijuana in violation of RCW 46.61.503 and 18 U.S.C. § 13
- ☐ Vehicular Homicide in violation of RCW 46.61.520 and 18 U.S.C. § 13
- ☐ Vehicular Assault in violation of RCW 46.61.524 and 18 U.S.C. § 13
- ☐ _____

4. I am seeking to present this application for a search warrant by electronic means because the natural metabolization of alcohol or drugs in the bloodstream may result in the loss of this evidence in the time it would take to present a search warrant application in a more traditional fashion.

SUMMARY OF PROBABLE CAUSE

5. As a result of my duties I am familiar with the jurisdictional boundaries of Joint Base Lewis McChord, Washington. The incident described below occurred within these jurisdictional boundaries, an area within the special maritime and territorial jurisdiction of the United States as defined in 18 U.S.C. § 7.

1 6. The initial contact with the Subject occurred on 01/10/2021 at
2 approximately at 1840 Hrs on North Gate Rd, Joint Base Lewis McChord, Washington
3 by Military Police Specialist Fleming.

4
5 The Joint Base Emergency Communications Center received a 911 telephone call from a
6 passerby for a rollover accident on North Gate Rd. JBLM Police Military Police
7 Specialist Derrick M. Fleming arrived on scene at approximately 1840 Hrs and made
8 contact with Mr. Brandon Allen NEMEC, who was identified as the driver of the vehicle.
9 Investigation at the scene revealed that Mr. NEMEC was traveling southbound on North
10 Gate Rd. at a high rate of speed when he lost control of his vehicle in a curve and struck
11 an embankment on the side of the road, before coming to a rest back in the roadway.
12 Injuries were sustained by Mr. NEMEC and his ten year old son, who was seated in the
13 right front passenger seat. Mr. NEMEC collapsed at the scene before regaining
14 consciousness, and was transported to the Madigan Medical Center Emergency room by
15 ambulance, along with his son.

16 Based on my training and experience, I believe the Subject may be under the influence of
17 intoxicants or drugs for the following reasons: Further Investigation at the scene
18 revealed an open container of alcoholic beverage "buzz ball" in the passenger cabin of
19 the vehicle on the passenger side window of the overturned vehicle.

20 During the ride to the hospital, Mr. NEMEC made several spontaneous utterances to
21 Military Police Specialist Fleming and JBLM Paramedics stating that he was speeding to
22 show off for his son, as well as "who doesn't drink and drive with their child in the
23 vehicle." Once at the hospital, I spoke with Mr. NEMEC, who initially was cooperative,
24 and signed the Washington State DUI request for voluntary blood sample, stating to me
25 "Of course I will consent to a blood test, I was drinking and driving with my son in the
26 vehicle, I need to be responsible" before becoming upset with a nurse and stating that he
27 wanted a lawyer, then stating that he would make the police get a warrant because "the
28 alcohol will be out of my system by then." Mr. NEMEC appeared to be disoriented at

1 times, and was looking for his son, who had been taken to imaging after witnessing him
 2 leave, and being told by hospital staff where he was going. Mr. NEMEC also became
 3 upset with hospital staff and threatened to have at least "three of you leaving here
 4 limping" if he was not strapped down to the bed, which he was not due to a Madigan
 5 doctor's request. Mr. NEMEC repeatedly attempted to sit up and move around the
 6 hospital bed despite being told to remain in a prone position by his doctor and nurses.

7
 8 7. The Subject:

- 9 ☐ Has refused to take a breath Alcohol test on an instrument approved by
 10 the State Toxicologist or a federal agency for such breath testing.
- 11 ☒ Is being treated in a hospital, clinic, doctor's office, emergency medical
 12 vehicle, ambulance, or other similar facility, or is at a location that lacks
 13 an instrument approved by the State Toxicologist or a federal agency for
 14 performing such breath testing, and has refused to submit to a blood
 15 test.
- 16 ☐ Is incapable due to physical injury, physical incapacity, or other
 17 physical limitation of submitting to a breath alcohol test, and the
 18 defendant has refused to submit to a blood test.
- 19 ☒ Has refused to submit to a blood test at the request of the undersigned.
- 20 ☐ Was not offered an opportunity to take a breath alcohol test on an
 21 instrument approved by the State Toxicologist or a federal agency for
 22 such breath testing because:
- 23 ☐ The available instrument is currently out of order
- 24 ☐ The individual does not speak English and the implied consent
 25 warnings are not available in a language that the defendant
 26 understands
- 27 ☐ _____
- 28 ☐ Submitted to a breath test on an instrument approved by the State
 Toxicologist or a federal agency for such breath testing but the breath
 alcohol concentration reading of xx **BAC LEVEL** is not consistent with
 the defendant's level of impairment suggesting that the defendant is
 under the influence of a drug.

9. For the reasons stated above, I request authority to direct a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A of the RCW, a physician assistant as defined in chapter 18.71A of the RCW, a first responder as defined in chapter 18.73 of the RCW, an emergency medical technician as defined in chapter 18.73 of the RCW, a health care assistant as defined in chapter 18.135 of the RCW, or a technician trained in withdrawing blood to extract a blood sample consisting of one or more tubes or vials from Brandon Allen Nemec.

10. This application for a warrant is being presented electronically pursuant to Fed. R. Crim P. 4.1 & 41(d)(3).

I certify (or declare) under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

Ernest M. Brunzelle, Affiant
Police Officer, JBLM Police Department

The above-named agent provided a sworn statement attesting to the truth of the foregoing affidavit on 10 day of January, 2021.

THE HON. ~~MICHELLE L. PETERSON~~
UNITED STATES MAGISTRATE JUDGE